

State of Utah  
Administrative Rule Analysis

## NOTICE OF PROPOSED RULE

- \* The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- \* Please address questions regarding information on this notice to the agency.
- \* The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- \* The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
State Admin Rule Filing Id:		Time filed:	

		<b>Agency No.</b>		<b>Rule No.</b>		<b>Section No.</b>
<b>Utah Admin. Code Ref (R no.):</b>	<b>R</b>	156	-	44a	-	
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>		-		-	

<b>1.</b>	<b>Agency:</b>	Commerce/Division of Occupational and Professional Licensing			
	<b>Room no.:</b>				
	<b>Building:</b>	Heber M. Wells Building			
	<b>Street address 1:</b>	160 East 300 South			
	<b>Street address 2:</b>				
	<b>City, state, zip:</b>	Salt Lake City UT 84111-2316			
	<b>Mailing address 1:</b>	PO Box 146741			
	<b>Mailing address 2:</b>				
	<b>City, state, zip:</b>	Salt Lake City UT 84114-6741			
	<b>Contact person(s):</b>				
	<b>Name:</b>	<b>Phone:</b>	<b>Fax:</b>	<b>E-mail:</b>	
	Debra Hobbins	801-530-6789	801-530-6511	dhobbins@utah.gov	

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

<b>2.</b>	<b>Title of rule or section (catchline):</b>	Nurse Midwife Practice Act Rules		
<b>3.</b>	<b>Type of notice:</b>	New ___; Amendment XXX; Repeal ___; Repeal and Reenact ___		
<b>4.</b>	<b>Purpose of the rule or reason for the change:</b>	<p>During the 2012 Legislative Session, H.B. 190 was passed, clearly enabling midwives to practice without the necessity of a physician's signature on a practice and referral plan. Although not required by statute or rule, the signature line on the Division (DOPL)-generated "Practice and Referral Plan" form triggered some midwives, physicians, and employers to require a physician's signature in order for the midwife to practice and obtain hospital privileges. This perceived requirement caused great difficulty and hardship for midwives, particularly in rural areas, because they were unable to engage physicians to sign the form and had to then quit practicing as midwives. Some physicians assumed that by signing the "Practice and Referral Plan" form they would be accepting liability for the midwife's practice. Not wanting to accept liability for a midwife's actions, many physicians understandably declined to sign the "Practice and Referral Plan" form. House Bill 190 incorporated and defined the term, "Intrapartum Referral Plan." This bill also amended the unprofessional conduct provisions, necessitating the assignment of administrative penalties, which this rule filing does. Other amendments are made at the request of the Certified Nurse Midwife Board to update referenced documents and the accrediting body's correct name.</p>		
<b>5.</b>	<b>This change is a response to comments from the Administrative Rules Review Committee.</b>	No XXX; Yes ___		

6.	<p><b>Summary of the rule or change:</b></p> <p>Throughout the rule, "these rules" were updated to "this rule" and the term "Division" was capitalized where appropriate. Section: 102: Paragraph (1) is updated to reflect the correct name of the accreditation body affiliated with the American College of Nurse-Midwives. Paragraph (5) updates the most current editions of the "Core Competencies for Basic Midwifery Practice" and the "Standards for the Practice of Midwifery". Paragraph (6) is being added to clearly state that the signature of a physician is not required on the "Intrapartum Referral Plan", reflecting the mandate of H.B. 190 in Subsections 58-44a-102(6) and (9). Section 402: Paragraphs (27) and (28) are added to reflect administrative penalties for failing to have and maintain a safe mechanism for obtaining medical consultation, collaboration, and referral with a consulting physician; and for falsely representing that the certified nurse midwife does have and maintains a safe mechanism for obtaining medical consultation, collaboration, and referral with a consulting physician. Section 502: Updates the "Code of Ethics" published by the American College of Nurse-Midwives.</p>
7.	<p><b>Aggregate anticipated cost or savings to:</b></p> <p><b>A) State budget:</b></p> <p><b>Affected:</b> No <input type="checkbox"/>; Yes XXX <input type="checkbox"/></p> <p>The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.</p> <p><b>B) Local government:</b></p> <p><b>Affected:</b> No XXX; Yes <input type="checkbox"/></p> <p>The proposed amendments only apply to licensed certified nurse midwives and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.</p> <p><b>C) Small businesses ("small business" means a business employing fewer than 50 persons):</b></p> <p><b>Affected:</b> No <input type="checkbox"/>; Yes XXX <input type="checkbox"/></p> <p>The proposed amendments may enable solo practitioners who are licensed as a certified nurse midwife or small group midwifery practices, particularly in rural Utah, who have not been able to practice due to the signature "requirement", to once again begin providing services to Utah citizens. Additionally, new certified nurse midwife graduates will be more likely to stay in Utah to practice and will not have to contend with the "practice and referral plan" signature that became a barrier to practice. The Division is unable to reasonably quantify any costs or savings associated with these proposed amendments.</p> <p><b>D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):</b></p> <p><b>Affected:</b> No <input type="checkbox"/>; Yes XXX <input type="checkbox"/></p> <p>The proposed amendments may allow Utah citizens to obtain obstetrical and women's health care from certified nurse midwives at reduced cost when compared to physician practice costs. Health care systems may be able to provide more and expanded services to women, particularly in rural areas, with the addition of certified nurse midwives to their provider panels. Physicians will be more likely to serve as consultants and referral sources for practicing certified nurse midwives now that they do not have to sign a document that was perceived as accepting liability for a midwife's practice. The Division is unable to reasonably quantify any costs or savings associated with these proposed amendments.</p>
8.	<p><b>Compliance costs for affected persons:</b></p> <p>The proposed amendments may enable solo practitioners who are licensed as a certified nurse midwife or small group midwifery practices, particularly in rural Utah, who have not been able to practice due to the signature "requirement", to once again begin providing services to Utah citizens. Additionally, new certified nurse midwife graduates will be more likely to stay in Utah to practice and will not have to contend with the "practice and referral plan" signature that became a barrier to practice. The proposed amendments may allow Utah citizens to obtain obstetrical and women's health care from certified nurse midwives at reduced cost when compared to physician practice costs. Health care systems may be able to provide more and expanded services to women, particularly in rural areas, with the addition of certified nurse midwives to their provider panels. Physicians will be more likely to serve as consultants and referral sources for practicing certified nurse midwives now that they do not have to sign a document that was perceived as accepting liability for a midwife's practice. The Division is unable to reasonably quantify any costs or savings associated with these proposed amendments. There is also no costs associated with obtaining updated documents which are incorporated by reference as the documents are available for free on the American College of Nurse-Midwives website.</p>
9.	<p><b>A) Comments by the department head on the fiscal impact the rule may have on businesses:</b></p>

	<p>The proposed amendments update terminology and statutory references, clarify that a physician's signature is not required as part of an intrapartum referral plan, and outline administrative penalties that may be assessed to a nurse midwife who fails to create a plan or who falsely represents to the Division that a plan is in place. Intrapartum referral plans were mandated by the Legislature in the 2012 General Session (H.B. 190). All compliance and enforcement costs were considered by the Legislature in passing the bill. No additional costs to small businesses are anticipated from this rule filing.</p>		
	<p><b>B) Name and title of department head commenting on the fiscal impacts:</b></p>		
	<p>Francine A. Giani, Executive Director</p>		
10.	<p><b>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.</b>  <b>State code or constitution citations (required)</b> (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :</p>		
	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	
	Section 58-44a-101		
11.	<p><b>This rule adds, updates, or removes the following title of materials incorporated by references</b> (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; <i>if none, leave blank</i>):</p>		
		<b>First Incorporation</b>	<b>Second Incorporation</b>
	<b>Official Title of Materials Incorporated (from title page)</b>	Core Competencies for Basic Midwifery Practice	Standards for the Practice of Midwifery
	<b>Publisher</b>	American College of Nurse-Midwives (ACNM)	American College of Nurse-Midwives (ACNM)
	<b>Date Issued</b>		
	<b>Issue, or version</b>	June 2012	September 2011
	<b>ISBN Number (optional)</b>		
	<b>ISSN Number (optional)</b>		
	<b>Cost of Incorporated Reference</b>		
	<b>Action: Adds, updates, or removes</b>	Updates	Updates
	(If this rule incorporates more than two items by reference, please attach additional pages)		
12.	<p><b>The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)</p>		
	<b>A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):</b>		01/14/2013
	<b>B) A public hearing (optional) will be held:</b>		
	<b>On (mm/dd/yyyy):</b>	<b>At (hh:mm AM/PM):</b>	<b>At (place):</b>
	01/09/2013	2:00 PM	160 East 300 South, Conference Room 475, Salt Lake City, Utah
13.	<b>This rule change may become effective on (mm/dd/yyyy):</b>		01/21/2013
	<p>NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.</p>		
14.	<p><b>Indexing information -- keywords</b> (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")); may not include the name of the agency:</p>		

	licensing	midwifery	
	certified nurse midwife		
<b>15.</b>	<b>Attach an RTF document containing the text of this rule change (filename):</b>	R156-44a.pro	
<b>To the agency:</b> Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.			
<b>AGENCY AUTHORIZATION</b>			
<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Director	<b>Date (mm/dd/yyyy):</b>	11/20/2012

eRules v. 2: ProposedRule.doc 09/03/2009 (<http://www.rules.utah.gov/agencyresources/forms/ProposedRule.doc>)

11. Additional incorporation by reference:

Title: Code of Ethics

Publisher: American College of Nurse-Midwives (ACNM)

Issue: October 2008

Updates

**R156. Commerce, Occupational and Professional Licensing.**

**R156-44a. Nurse Midwife Practice Act Rule[s].**

**R156-44a-101. Title.**

Th[ese]is rule[s-are] is known as the "Nurse Midwife Practice Act Rule[s]."

**R156-44a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 44a, as used in Title 58, Chapters 1 and 44a or th[ese]is rule[s]:

(1) "Approved certified nurse midwifery education program" means an educational program which is accredited by the American Midwifery Certification Board (AMCB), affiliated with the American College of Nurse-Midwives (ACNM).

(2) "CNM" means a certified nurse midwife.

(3) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.

(4) "Direct supervision" as used in Section 58-44a-305 means that the person providing supervision shall be available on the premises at which the supervisee or consultee is engaged in practice.

(5) "Generally recognized scope and standards of nurse midwifery" means the scope and standards of practice set forth in the "Core Competencies for Basic Midwifery Practice", [May 2002]June 2012, and the "Standards for the Practice of Midwifery", [March 2003]September 2011, published by the American College of Nurse-Midwives which are hereby adopted and incorporated by reference, or as established by the professional community.

(6) "Intrapartum referral plan":

(a) is as defined in Section 58-44a-102; and

(b) as provided in Section 58-44a-102, does not require the signature of a physician.

([6]7) "Supervision" in Section R156-44a-601 means the provision of guidance or direction, evaluation and follow up by the certified nurse midwife for accomplishment of tasks delegated to unlicensed assistive personnel or other licensed individuals.

([7]8) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 44a, is further defined in Section R156-44a-502.

**R156-44a-103. Authority - Purpose.**

Th[ese]is rule[s-are] is adopted by the [e]Division under the authority of Subsection 58-1-106(1)(a) to enable the [e]Division to administer Title 58, Chapter 44a.

**R156-44a-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 44a is established by rule in Section R156-1-308a(1).

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

(3) Each applicant for licensure renewal shall hold a valid certification from the American Midwifery Certification Board, Inc.

**R156-44a-402. Administrative Penalties.**

In accordance with Subsections 58-44a-102(1) and 58-44a-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in practice as a CNM or RN when not licensed or exempt from licensure: initial offense: \$2,000 - \$5,000  
subsequent offense(s): \$5,000 - \$10,000

(2) Representing oneself as a CNM or RN when not licensed: initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000

(3) Using any title that would indicate that one is licensed under this chapter: initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000

(4) Practicing or attempting to practice nursing without a license or with a restricted license: initial offense: \$2,000 - \$5,000  
subsequent offense(s): \$5,000 - \$10,000

(5) Impersonating a licensee or practicing under a false name: initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000

(6) Knowingly employing an unlicensed person: initial offense: \$500 - \$1,000  
subsequent offense(s): \$1,000 - \$5,000

(7) Knowingly permitting the use of a license by another person: initial offense: \$500 - \$1,000  
subsequent offense(s): \$1,000 - \$5,000

(8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the [d]Division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission: initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000

(9) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating nurse midwifery: initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000

(10) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard: initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000

(11) Engaging in conduct that results in convictions or, or a plea of nolo contendere to a crime of moral turpitude or other crime: initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000

(12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:

initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000  
(13) Engaging in conduct, including the use of  
intoxicants, drugs to the extent that the conduct does or may  
impair the ability to safely engage in practice as a CNM:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000  
(14) Practicing or attempting to practice as a CNM when  
physically or mentally unfit to do so:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000  
(15) Practicing or attempting to practice as a CNM through  
gross incompetence, gross negligence, or a pattern of  
incompetency or negligence:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000  
(16) Practicing or attempting to practice as a CNM by any  
form of action or communication which is false, misleading,  
deceptive, or fraudulent:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000  
(17) Practicing or attempting to practice as a CNM beyond  
the individual's scope of competency, abilities, or education:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000  
(18) Practicing or attempting to practice as a CNM beyond  
the scope of licensure:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000  
(19) Verbally, physically, mentally, or sexually abusing  
or exploiting any person through conduct connected with the  
licensee's practice:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000  
(20) Disregarding for a patient's dignity or right to  
privacy as to his person, condition, possessions, or medical  
record:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000  
(21) Engaging in an act, practice, or omission which does  
or could jeopardize the health, safety, or welfare of a patient  
or the public:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000  
(22) Failing to confine one's practice to those acts  
permitted by law:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000  
(23) Failure to file or impeding the filing of required  
reports:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000  
(24) Breach of confidentiality:  
initial offense: \$200 - \$1,000

subsequent offense(s): \$500 - \$2,000  
(25) Failure to pay a penalty:  
Double the original penalty amount up to \$10,000  
(26) Prescribing a Schedule II-III controlled substance  
without a consulting physician or outside of a consultation and  
referral plan:  
initial offense: \$500 - \$1,000  
subsequent offense(s): \$500 - \$2,000  
(27) Failure to have and maintain a safe mechanism for  
obtaining medical consultation, collaboration, and referral with  
a consulting physician, including failure to identify one or  
more consulting physicians in the written documents required by  
Subsection 58-44a-102(9)(b)(iii):  
initial offense: \$500 - \$1,000  
subsequent offense(s): \$500 - \$2,000  
(28) Representing that the certified nurse midwife is in  
compliance with Subsection 58-44a-502(8)(a) when the certified  
nurse midwife is not in compliance with Subsection 58-44a-  
502(8)(a):  
initial offense: \$500 - \$1,000  
subsequent offense(s): \$500 - \$2,000  
([27]29) Any other conduct which constitutes  
unprofessional or unlawful conduct:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000

**R156-44a-502. Unprofessional Conduct.**

"Unprofessional conduct" includes failure to abide by the  
"Code of Ethics" ~~[of]~~ published by the American College of Nurse-  
Midwives["], ~~[December 2004, published by the American College  
of Nurse-Midwives]~~ October 2008, which is hereby adopted and  
incorporated by reference.

**KEY: licensing, midwifery, certified nurse midwife**

**Date of Enactment or Last Substantive Amendment: [January 5,  
2006]2013**

**Notice of Continuation: February 5, 2009**

**Authorizing, and Implemented or Interpreted Law: 58-1-  
106(1)(a); 58-1-202(1)(a); 58-44a-101**